

Mar 16, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LISA K. SCULL,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 4:17-cv-05012-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 16

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 16. The parties consented to proceed before a magistrate judge. ECF No. 7. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's Motion (ECF No. 15) and grants Defendant's Motion (ECF No. 16).

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STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b); 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [his or her] physical or mental ability to do basic work
10 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
11 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
12 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 §§ 404.1520(c); 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
3 work, analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

5 The claimant bears the burden of proof at steps one through four above.
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
8 capable of performing other work; and (2) such work “exists in significant
9 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2);
10 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 **ALJ’S FINDINGS**

12 Plaintiff applied for disability insurance benefits and supplemental security
13 income benefits on February 25, 2013, alleging a disability onset date of
14 November 4, 2004. Tr. 237-53. Benefits were denied initially, Tr. 97-136, 175-82,
15 and upon reconsideration. Tr. 137-174, 187-95. Plaintiff appeared for a hearing
16 before an administrative law judge (ALJ) on June 10, 2015. Tr. 44-96. On July 9,
17 2015, the ALJ denied Plaintiff’s claims. Tr. 13-43.

18 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
19 activity since November 4, 2004. Tr. 18. At step two, the ALJ found Plaintiff has
20 the following severe impairments: carpal tunnel syndrome, bilateral shoulder

1 impairment, degenerative disk disease, obesity, anxiety disorder, and affective
2 disorder. Tr. 18. At step three, the ALJ found that Plaintiff does not have an
3 impairment or combination of impairments that meets or medically equals the
4 severity of a listed impairment. Tr. 20. The ALJ then concluded that Plaintiff has
5 the RFC to:

6 lift and carry ten pounds frequently and twenty pounds occasionally. She
7 can stand and/or walk for one hour at a time, after which she needed to sit
8 for a few minutes (while she continues to work in a sitting position). In this
9 manner, she can stand and/or walk for a total of four hours in an eight-hour
10 workday. She can sit for a total of six hours in an eight-hour workday. She
11 can occasionally reach overhead bilaterally. She can frequently reach in
12 other directions bilaterally. Below shoulder-level, she can frequent push and
13 pull with her upper extremities. She can occasionally push and pull with her
14 lower extremities. She can occasionally climb ramps and stairs. She cannot
15 climb ladders, rope, or scaffolding. She can frequently stoop and balance.
16 She can occasionally kneel and crouch. She cannot crawl. She must avoid
concentrated exposure to wetness, extreme cold, vibration, and hazards
(such as heights and dangerous machinery). She has sufficient concentration
to understand, remember, and carry out simple repetitive tasks in in two-
hour increments. With usual and customary breaks, she can maintain
adequate pace with simple repetitive tasks. She can work in coordination
with a small group of coworkers, numbering three or less. She can work in
the same room with an unlimited number of coworkers, without coordination
with these individuals. She can have superficial and occasional contact with
the general public.[] She can occasionally interact with supervisors and can
respond appropriately to criticism.

17 Tr. 22-23 (footnote omitted). At step four, the ALJ found Plaintiff was unable to
18 perform any past relevant work. Tr. 33. At step five, the ALJ found that
19 considering Plaintiff's age, education, work experience, and RFC, there are other
20 jobs that exist in significant numbers in the national economy that the Plaintiff can

1 perform such as officer helper, production assembler, and order caller. Tr. 34-35.

2 The ALJ concluded Plaintiff has not been under a disability, as defined in the
3 Social Security Act, since November 4, 2004 through the date of the decision. Tr.
4 35.

5 On December 20, 2016, the Appeals Council denied review, Tr. 1-8, making
6 the ALJ's decision the Commissioner's final decision for purposes of judicial
7 review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

8 ISSUES

9 Plaintiff seeks judicial review of the Commissioner's final decision denying
10 her disability insurance benefits under Title II and supplemental security income
11 benefits under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises
12 the following issues for this Court's review:

13 1. Whether the ALJ properly determined Plaintiff's severe impairments at step
14 two; and

15 2. Whether the ALJ properly determined Plaintiff's residual functional capacity
16 and posed a proper hypothetical to the vocational expert.

17 *See* ECF No. 15 at 4, 11.

DISCUSSION

A. Step Two

Plaintiff contends the ALJ should have found at step two that she suffers from a severe left knee impairment. ECF No. 15 at 7-9. The ALJ found the record contained conflicting evidence that failed to establish Plaintiff suffers from a severe knee impairment. Tr. 19.

“The step-two inquiry is a de minimis screening device to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). The purpose is to identify claimants whose medical impairment is so slight that it is unlikely they would be disabled even if age, education, and experience were taken into account. *Bowen v. Yuckert*, 482 U.S. 137, 153 (1987). Plaintiff has the burden to show that his or her impairments are severe and are expected to last for a continuous period of twelve months. *Ukolov v. Barnhart*, 420 F.3d 1002, 1004 (9th Cir. 2005); *see also* 20 C.F.R. §§ 404.1509, 404.1520(a)(4)(ii), 416.909, 416.920(a)(4)(ii). An impairment, to be considered severe, must significantly limit an individual’s ability to perform basic work activities, which include: walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; seeing, hearing, and speaking; understanding, carrying out and remembering simple instructions; responding appropriately to supervision, coworkers and usual work situations; and dealing with changes in a routine work setting. 20 C.F.R. §§

1 404.1521(b), 920(c); Social Security Ruling (SSR) 85-28, 1985 WL 56856 (Jan. 1,
2 1985); *Smolen*, 80 F.3d at 1290. “An impairment is not severe if it is merely ‘a
3 slight abnormality (or combination of slight abnormalities) that has no more than a
4 minimal effect on the ability to do basic work activities.’ ” *Webb v. Barnhart*, 433
5 F.3d 683, 686 (9th Cir. 2005) (quoting SSR 96–3p, 1996 WL 374181 (July 2,
6 1996)).

7 A physical or mental impairment is one that “results from anatomical,
8 physiological, or psychological abnormalities which are demonstrable by
9 medically acceptable clinical and laboratory diagnostic techniques.” 42 U.S.C. §§
10 423(d)(3), 1382c(a)(3)(D). An impairment must be established by medical
11 evidence consisting of signs, symptoms, and laboratory findings, and “under no
12 circumstances may the existence of an impairment be established on the basis of
13 symptoms alone.” *Ukolov v. Barnhart*, 420 F.3d 1002, 1005 (9th Cir. 2005) (citing
14 SSR 96-4p, 1996 WL 374187 (July 2, 1996)) (defining “symptoms” as an
15 “individual’s own perception or description of the impact of” the impairment).

16 Here, the ALJ resolved step two in Plaintiff’s favor, finding six of Plaintiff’s
17 impairments were severe including carpal tunnel syndrome, bilateral shoulder
18 impairment, degenerative disk disease, obesity, anxiety disorder, and affective
19 disorder. Tr. 18. However, the ALJ found that Plaintiff’s left knee impairment,
20 seizures, and somatoform disorder were all non-severe impairments. Tr. 19-20.

1 The ALJ separately analyzed Plaintiff's knee impairment, describing the medical
2 evidence in detail. Tr. 19. The ALJ gave multiple reasons for finding the knee
3 impairment is non-severe. First, the ALJ remarked that the medical record did not
4 refer to prolonged use of an assistive device, though the ALJ also acknowledged
5 Plaintiff's use of a walker after a 2004 motor vehicle accident and Plaintiff's
6 testimony that she has continued to use a cane occasionally. Tr. 19. The ALJ
7 further found that the left medial meniscus tear was resolved with arthroscopic
8 surgery in 2005 and while receiving medical care (including physical therapy) in
9 2006 she repeatedly reported her left knee was doing "fairly well." Tr. 19. In
10 2007, Plaintiff reported her left knee injury from the motor vehicle accident had
11 resolved. *Id.* Finally, the ALJ found that the left lateral meniscus tear had
12 resolved itself within less than twelve months of its discovery. Tr. 19.

13 Plaintiff does not challenge any of these findings or contend the ALJ failed
14 to consider medical records. Instead, Plaintiff alleges that her diagnosis of a
15 medial meniscus tear in 2005 and her testimony that she uses a cane on occasion
16 are sufficient to demonstrate her knee impairment is severe. ECF No. 15 at 8. The
17 Court concludes the ALJ's step two analysis was sufficient and the finding that
18 Plaintiff's knee impairment is non-severe is "supported by inferences reasonably
19 drawn from the record." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.

2008) (citation omitted). Accordingly, substantial evidence supports the ALJ's decision at step two. *See Webb*, 433 F.3d at 686.

Additionally, the parties concede that once step two is resolved in Plaintiff's favor, harmful error only occurs only if the ALJ fails to properly consider all impairments, both severe and non-severe, in the RFC analysis. *See Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (recognizing that harmless error applies in the social security context); *Burch v. Barnhart*, 400 F.3d 676, 682-684 (9th Cir. 2006) (holding that the ALJ did not commit reversible error by not considering the claimant's obesity or finding it severe at step two because the ALJ proceeded with the sequential analysis and adequately considered the claimant's obesity in making his RFC determination).

As explained below, Plaintiff fails to show that the ALJ erred in determining Plaintiff's RFC at step four.

B. RFC and Hypothetical

Plaintiff contends the ALJ's formulation of the RFC, and the resulting hypothetical posed to the vocational expert, failed to consider the impact of her knee impairment, obesity, and limitations of being off-task, absenteeism, and no more than occasional reaching in all directions. ECF No. 15 at 9-11; ECF No. 17 at 2-4.

1 In determining RFC, the ALJ is required to consider the combined effect of
2 all the claimant's impairments, mental and physical, exertional and non-exertional,
3 severe and non-severe. 42 U.S.C. §§ 423(d) (2)(B), (5)(B). "An ALJ must
4 propound a hypothetical to a [vocational expert] that is based on medical
5 assumptions supported by substantial evidence in the record that reflects all the
6 claimant's limitations." *Osenbrock v. Apfel*, 240 F.3d 1157, 1165 (9th Cir. 2001).
7 "If the assumptions in the hypothetical are not supported by the record, the opinion
8 of the vocational expert that claimant has a residual working capacity has no
9 evidentiary value." *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). "It
10 is, however, proper for an ALJ to limit a hypothetical to those impairments that are
11 supported by substantial evidence in the record." *Osenbrock*, 240 F.3d at 1165.
12 Here, this Court finds the RFC included the full extent of Plaintiff's limitations
13 supported by substantial evidence in the record.

14 *1. Knee impairment*

15 Plaintiff contends the ALJ failed to consider her left knee impairment in
16 formulating the RFC. In support of this assertion, Plaintiff argues "[t]his is evident
17 in the fact that the ALJ only limited [Plaintiff] to light work with other non-
18 exertional limitations. Such a knee impairment in combination with the other
19 severe impairments surely results in [] further diminished RFC findings." ECF No.
20 17 at 2. Plaintiff fails to develop this portion of her argument. She does not

1 identify any additional functional limitations as a result of her knee impairment or
2 cite to any evidence in the 1600-page record in support of her position. It is not
3 this Court's duty to comb the record in search of arguable support for Plaintiff's
4 contention. *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir.2014) (finding that a
5 reviewing court cannot "comb the administrative record to find specific conflicts").
6 As a result, the Court may decline to consider this argument. *Carmickle*, 533 F.3d
7 at 1161 n.2 ("[I]ssues not argued with specificity in briefing will not be
8 addressed.").

9 Despite Plaintiff's general contention to the contrary, it appears that the ALJ
10 incorporated all of her physical limitations into the RFC. The ALJ provided a
11 thorough summary of the medical evidence pertaining to Plaintiff's knee
12 impairment, including the objective evidence and examination findings after
13 Plaintiff underwent arthroscopic surgery in 2005. Tr. 19 (citing Tr. 522-25 (2006
14 progress notes stating Plaintiff is going to physical therapy, "doing well," and has
15 full range of motion in the knee and stability in all planes); Tr. 848 ("She did have
16 some significant lower extremity symptoms initially...but those have since
17 resolved."); Tr. 1129-31 (MRI of left knee dated February 2, 2012); Tr. 1441-42
18 (April 3, 2013 treatment note from Andrea Barrett, M.D. noting "Left knee
19 subjectively worse since cessation of vitamin D supplement. Clinically she does
20 not appear to have a lateral meniscus tear or patellar instability and tweaking the

saphenous nerve can cause a reflex inhibition of quad contraction which will make her knee collapse.”)). After consideration of the record in its entirety, the ALJ found numerous physical limitations in formulating the RFC and incorporated them into the assessment of Plaintiff’s ability to perform light work, her ability to stand or walk, and the assessment of Plaintiff’s postural limitations. Tr. 22-23. The RFC is consistent with the 2013 assessment of Dale Thuline, M.D., Tr. 157-74, which the ALJ accorded significant weight and Plaintiff does not contest. Tr. 23. If there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

The Court concludes Plaintiff has not demonstrated the ALJ erred in regards to any limitations related to Plaintiff’s knee impairment.

2. Obesity

With respect to Plaintiff’s obesity, SSR 02–1p states that “[an ALJ] may not make assumptions about the severity or functional effects of obesity combined with other impairments. Obesity in combination with another impairment may or may not increase the severity of functional limitations of the other impairment. [The ALJ] will evaluate each case based on the information in the case record.” SSR 02–1p, 2002 WL 34686281, at *6 (Sept. 12, 2002).

1 The ALJ appropriately considered any possible limitations resulting from
2 this impairment in the RFC finding. The ALJ's decision set forth Plaintiff's
3 testimony that her weight fluctuated between 350 and 500 pounds and "constantly
4 strained her back, joints, and muscles." Tr. 23. The ALJ also noted other medical
5 evidence documenting Plaintiff's weight, Tr. 26, and her ability to ascend stairs
6 quickly without any difficulty, despite a weight of 300 pounds. Tr. 24 (citing Tr.
7 359). The ALJ concluded that "[t]he claimant's overall medical studies and
8 examination findings are inconsistent with severe deficits in her physical
9 functioning, even with the effects of her obesity." Tr. 24. Among a number of
10 restrictions, the RFC limited Plaintiff to light work with simple repetitive tasks,
11 standing or walking for an hour at time, and never crawling or climbing ladders,
12 rope or scaffolding. Tr. 23.

13 Plaintiff has not identified any information from any treatment provider
14 describing how her obesity limits her functioning more restrictively than
15 determined by the ALJ. Plaintiff suggests that her weight sufficed to alert the ALJ
16 of the need for a more restrictive limitations than occasional kneeling, crouching,
17 and climbing stairs. ECF No. 17 at 3. However, the ALJ cannot assume Plaintiff's
18 obesity has more limiting functional effects than are supported by the record.
19 Plaintiff does not identify any error in the ALJ's evaluation of the medical
20 evidence, which consisted of a detailed description of the evidence of record and

1 numerous professional assessments of the Plaintiff's physical functioning, four of
2 which the ALJ accorded significant weight. Tr. 31-32 (crediting Larry Iversen,
3 M.D., Dennis Byam, D.C., Raymond Berg, M.D., and Dr. Thuline). Both Dr.
4 Thuline and physical therapist Kirk Holle, whom the ALJ assigned some weight,
5 opined Plaintiff could occasionally crouch, kneel, and climb stairs. Tr. 30 (citing
6 Tr. 356-64); Tr. 32 (citing Tr. 151). Substantial evidence supports the ALJ's RFC
7 determination and the ALJ properly considered Plaintiff's obesity in accordance
8 with SSR 02-1p. *See Burch*, 400 F.3d at 683 (the plaintiff has burden to provide
9 evidence establishing how her obesity limits her functioning).

10 *3. Off-task Time or Absenteeism*

11 Plaintiff contends "[t] result of [Plaintiff's] physical and mental health
12 impairments substantiate the need for a finding of 'off-task' time and absences
13 from work." ECF No. 15 at 10.

14 Plaintiff provides no support for this assertion, but notes that in 2013,
15 examining psychologist Manuel Gomes, Ph.D. opined Plaintiff would need to start
16 with part-time work and a mental source statement dated November 30, 2013 from
17 Kishore Varada, PA-C, Tr. 1523-25, found marked and severe limitations in
18 Plaintiff's ability to perform at a consistent pace. ECF No. 15 at 10. However, the
19 ALJ concluded "[w]ith usual and customary breaks, she can maintain adequate
20 pace with simple repetitive tasks." Tr. 23. In making this finding, the ALJ

1 considered both of opinions of Dr. Gomes and Mr. Varada and assigned them
2 minimal weight. Tr. 32-33. The ALJ rejected Dr. Gomes and Mr. Varada's
3 assessments based upon inconsistency with examination notes, heavy reliance
4 upon subjective reporting, and incompatibility with Plaintiff's activities and the
5 longitudinal examination findings. Tr. 32-33. Plaintiff does not challenge these
6 determinations or any aspect of the ALJ's discussion of the relevant medical
7 evidence. These assessments are thus based on substantial evidence and cannot be
8 reweighed by this Court. Further, the ALJ gave significant weight to the opinions
9 of Dr. Fligstein and Dr. Nelson, who opined Plaintiff could maintain concentration,
10 persistence, and pace with at least semi-skilled tasks, Tr. 33, and the RFC limited
11 the Plaintiff to simple repetitive tasks. Plaintiff does not identify any error in the
12 ALJ's evaluation of these medical opinions. Accordingly, the Court concludes the
13 ALJ properly exercised her discretion not to include limitations for being off task
14 and absent from work in Plaintiff's RFC.

15 *4. Reaching Limitation*

16 Plaintiff also contends, for the first time in the Reply, that the ALJ's
17 formulation of the RFC is not supported by substantial evidence because it did not
18 include a limitation to no more than occasional reaching in any direction. ECF No.
19 17 at 3. The RFC limited Plaintiff to occasional reaching overhead bilaterally,
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1 frequent reaching in other directions bilaterally, and below shoulder-level, frequent
2 pushing and pulling with her upper extremities.¹ Tr. 23.

3 Plaintiff fails to develop this argument and raised it for the first time in the
4 Reply, therefore the Court may decline to consider it. *Carmickle*, 533 F.3d at 1161
5 n.2 (“[I]ssues not argued with specificity in briefing will not be addressed.”).

6 Plaintiff does not address the medical evidence and the ALJ’s findings related to
7 Plaintiff’s reaching limitation. In the decision, the ALJ explained the evidence
8 relied upon in formulating the RFC and supporting the finding that “[a]lthough she
9 has ongoing upper extremity impairment, the claimant’s longitudinal examination
10 findings indicate normal functioning in her arms.” Tr. 26. The ALJ thoroughly
11 summarized the relevant medical evidence after Plaintiff’s shoulder surgery. Tr.
12 26-27. Moreover, in regards to Plaintiff’s ability to reach, the ALJ adopted the
13 opinion of Dr. Thuline and rejected the opinion of Andrea Barrett, M.D. based on
14 the claimant’s routine displays of normal or nearly-normal range of motion in her
15 extremities, without motor or sensory defects. Tr. 31-32. Plaintiff does not

17 ¹ All of the jobs identified by the vocational expert (VE) required frequent
18 reaching outward. Tr. 92. The VE testified that if an individual with the same
19 RFC “was limited to occasional reaching in all directions that would eliminate
20 those jobs.” Tr. 92, 93-94.

1 challenge any aspect of the ALJ's discussion of the medical evidence regarding her
2 reaching limitation or the weight assigned to the foregoing opinions. Accordingly,
3 the Court finds the RFC's limitations on reaching are supported by substantial
4 evidence.

5 Overall, the Court concludes the RFC is supported by substantial evidence in
6 the record.

7 *5. Hypothetical*

8 Plaintiff contends the ALJ's errors in formulating the RFC resulted in the
9 ALJ propounding an incomplete hypothetical to the vocational expert. ECF No. 15
10 at 11 (stating the hypothetical was incomplete because it "failed to include an
11 indication of how her obesity will affect her RFC, how much time Ms. Scull would
12 be 'off-task' and how many days she would be absent from work as a result of her
13 impairments."). However, the ALJ's hypothetical contained the limitations that the
14 ALJ found credible and supported by substantial evidence in the record; thus, the
15 ALJ properly relied on the testimony by the vocational expert at steps four and
16 five. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

17 **CONCLUSION**

18 After review, the Court finds that the ALJ's decision is supported by
19 substantial evidence and free of harmful error. **IT IS ORDERED:**

20 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

1 2. Defendant's Motion for Summary Judgment (ECF No. 16) is

2 **GRANTED.**

3 The District Court Executive is directed to file this Order, enter

4 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
5 **THE FILE.**

6 DATED March 16, 2018.

7 s/Mary K. Dimke

8 MARY K. DIMKE

9 UNITED STATES MAGISTRATE JUDGE
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